

ESTTA Tracking number: **ESTTA110800**

Filing date: **11/21/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92044228
Party	Defendant Proalti S.A. de C.V. Proalti S.A. de C.V. Blvd. Diaz Ordaz 1225-501 Colonia Las Reynas MXX Irapuato, Guanajuato Z.C. 36660,
Correspondence Address	RICHARD J. MCKENNA FOLEY & LARDNER 777 EAST WISCONSIN AVENUE MILWAUKEE, WI 53202-5367
Submission	Motion to Dismiss 2.132
Filer's Name	Richard J. McKenna
Filer's e-mail	ptomailmilwaukee@foley.com
Signature	/R.J. McKenna/
Date	11/21/2006
Attachments	Dismiss.PDF (3 pages)(31177 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CASA TEQUILERA DE ARANDAS)	
SA DE CV KM)	
)	
Petitioner,)	
)	Cancellation No. 92044228
v.)	Registration No. 2,791,980
)	Mark: DON DIEGO SANTA
PROALTI S.A. de C.V.)	
)	
Registrant.)	

MOTION TO DISMISS

Proalti S.A. de C.V. (“Registrant”) hereby requests that the above-identified cancellation proceeding be dismissed with prejudice pursuant to 37 C.F.R. § 2.132(a) on the grounds that Casa Tequilera De Arandas SA de CV KM, (“Petitioner”) has not taken testimony or offered any evidence to support its case in this cancellation proceeding.

On September 13, 2005, the Trademark Trial and Appeal Board (“TTAB”) suspended the cancellation proceedings for six months. This suspension period expired without word from either party. On May 9, 2006, the TTAB issued an order resuming the cancellation proceedings and resetting the trial dates. The Petitioner’s testimony period closed on November 7, 2006. Petitioner has not taken testimony nor has it submitted any other evidence in support of Petition for Cancellation.

Registrant’s Motion to Dismiss should be granted because the Petitioner’s testimony period has expired and Petitioner has not taken testimony or offered any other evidence to support its case. 37 C.F.R. § 2.132(a); T.B.M.P. § 534.02; *Hewlett-Packard Co. v. Olympus*

Corp., 18 U.S.P.Q.2d 1710 (Fed. Cir. 1991). In view of the fact that the Petitioner has offered no evidence during its testimony period, the Registrant should be spared the expense and delay of continuing with the trial. *See Litton Business Systems, Inc. v. J.G. Furniture Co. Inc.*, 190 U.S.P.Q. 428, *recon. denied*, 190 U.S.P.Q. 431 (T.T.A.B. 1976).

Accordingly, Registrant respectfully requests that this Motion to Dismiss be granted and that the cancellation be dismissed with prejudice pursuant to 37 C.F.R. § 2.132(a) on the grounds that the Petitioner has failed to prosecute its case.

Dated this 21st day of November, 2006.

By:



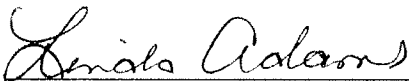
Richard J. McKenna
Tricia L. Schulz
FOLEY & LARDNER
777 East Wisconsin Avenue
Milwaukee, WI 53202-5306
Phone: 414-297-5723

Attorneys for Registrant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION TO DISMISS was served on counsel for Petitioner this 21st day of November, 2006, by mailing a true and correct copy thereof via first class U.S. mail, postage prepaid, addressed as follows:

Adam K. Sacharoff
Much Shelist Freed Denenberg Ament & Rubenstein, PC
191 N. Wacker Drive, Suite 1800
Chicago, IL 60606

By: 
Linda Adams
FOLEY & LARDNER LLP
Legal Assistant